IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 178 of 1996.

Judgement reserved on: 1.11.2007.

Date of decision: 5.11.2007.

Rattan Lal (Chand) Sharma ….. Appellant.

Vs.

State of H.P. & anr. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. B.K.Malhotra, Advocate.

For the Respondents : Mr. Virender K. Verma, Addl. Advocate General, for respondent No.1.

Mr. K.D.Sood, Advocate, for respondent No.2.

Kuldip Singh, Judge.

The plaintiff is in appeal against the judgement, decree dated 29.1.1996, passed by the learned District Judge, Hamirpur, in Civil Appeal No. 41 of 1989, confirming the judgement and decree dated 24.12.1988, passed by the learned Senior Sub Judge, Hamirpur in Civil Suit No. 79-I of 1985.

2. The facts in brief are that appellant filed a suit on 7.5.1985, against the respondents for recovery of Rs. 50,000/- by way of special damages for harassment caused to the appellant. It has

---

Whether the reporters of the local papers may be allowed to see the Judgment?

been alleged that appellant is an employee holding the post of Instructor (Turning) posted in Government Polytechnic under the direct control of the Technical Education Department of State of Himachal Pradesh. The respondent No. 2 is the Disciplinary Authority of the post held by the appellant. Respondent No. 2 initiated departmental inquiry against the appellant. Respondent No.2 wanted to humiliate the appellant. The respondent No.2 nursed the grievance against the appellant as he took stand as representative of employees. The appellant was humiliated, suspended during the inquiry. The children of the appellant were deprived proper educational facilities. The accusations against the appellant were false. He was ultimately exonerated after protracted enquiry. On these grounds, the appellant filed a suit for recovery of Rs. 50,000/- against the respondents.

3. The suit was contested by the respondents and admitted that appellant is an employee posted as Instructor in Government Polytechnic Hamirpur and respondent No.2 has administrative control over the appellant. The respondent No.2 is also Disciplinary Authority of appellant. A departmental inquiry was initiated against the appellant for having committed acts of gross misconduct, indiscipline, irresponsible behaviour, insubordination, disobeying government orders and instructions etc. The Inquiry Officer found the appellant guilty and thereafter penalty of withholding two increments without cumulative effect was imposed on the appellant. The appellant made an appeal to government against his punishment. The government set-aside the penalty and one Sh. N.K.Misra, Under Secretary,

Technical Education to the Government of Himachal Pradesh was appointed as Inquiry Officer. He found the appellant guilty and ultimately penalty of censure was imposed upon the appellant. It was denied that appellant was completely exonerated. The departmental inquiry was initiated without any malice, no humiliation was caused to the appellant by the respondent. The appellant himself delayed the inquiry. He was paid subsistence allowance as per rules. The penal rent was imposed as per rules. The appellant is not entitled to any special damages. The maintainability of the suit was questioned. The pleas of limitation and lack of enforceable cause of action have also been taken. The disciplinary action was taken by respondent No. 2 against the appellant as per rules. The respondent No.2 acted bonafide in his official capacity in initiating disciplinary proceedings against the appellant.

4. The learned Senior Sub Judge dismissed the suit on 24.12.1988. The appellant filed an appeal. In appeal, the findings on issues No. 1 to 3 and 5 were affirmed, but some observations were made against the action and attitude of respondent No. 2 in dealing with the disciplinary proceedings against the appellant, and ultimately the appeal was dismissed, hence the appellant is in appeal.

5. The appeal was admitted on 30.7.1996, but without referring to or framing any substantial questions of law, though substantial questions of law were framed and filed by the appellant alongwith the memorandum of appeal.

6. The learned counsel for the appellant has submitted that against the penalty of censure dated 23.6.1983, the appellant has

filed an appeal on 10.8.1983 and the decision on that appeal has not been communicated to the appellant as yet. In other words, the appellant has filed the suit without waiting for the result of his appeal, which he filed against the censure order dated 23.6.1983. There is nothing on record that the appeal filed by the appellant against the penalty of censure dated 23.6.1983, has been decided. The appeal has not been admitted on any substantial question of law. This court otherwise can look into the aspect whether the suit filed by the appellant is maintainable. Even where the appeal has been admitted on substantial questions of law in that case also under sub-section 5 of Section 100 CPC at the time of hearing of the appeal the respondent has a right to argue that the case does not involve any substantial question of law.

7. The admitted case of the appellant is that against the penalty of censure order dated 23.6.1983, an appeal was filed by him and he does not know the result of that appeal. This being the case, it can be safely held that the suit filed by the appellant is pre-mature and not maintainable because censure order dated 23.6.1983 has not attained finality. The two courts below have otherwise concurrently held against the appellant. No substantial question of law is involved in the appeal, which requires determination by this court. The appeal is accordingly dismissed with no orders as to costs.

November 5, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**